IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 852 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHBHAI KODARBHAI GAMAR - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR H AHMED for Appellant(s) : 1,
MR HL JANI APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 23/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. This appeal under Section 374 of the Code of Criminal Procedure has been preferred by the present appellant-accused being aggrieved and dissatisfied by the judgment and order of conviction dated 29.03.2007 passed by the learned Additional Sessions Judge, Fast Track Court No.2, Sabarkantha @ Himmatnagar, camp at Idar whereby he was sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.2,000/-, in default, to undergo three months R.I. for the charge under Section 376 of the Indian Penal Code and also sentenced to undergo one year rigorous imprisonment and fine of Rs.500/-, in default, to undergo two months R.I. for the charge under Section 323 of the Indian Penal Code. It is also ordered to pay Rs.15,000/- to the victim as special compensation.

2. As there was a delay in filing the present Criminal Appeal, the appellant-accused has also preferred Criminal Misc. Application No.6335/2007 and prayed for condonation of delay, which was allowed by this Court vide order dated 21.06.2007 and, thereafter, this appeal has been placed before this Court. Initially, we heard learned counsel for the

appellant-accused and felt that for the purpose of admission, record and proceedings are required to be called for and, hence, we have passed order to that effect on 04.07.2007 calling for the R & P from the trial Court.

3. The case of the prosecution in short is as under:-

3.1 On the day of incident, when the victim was alone at her home, the appellant-accused, who is aged about 26 years well built and married having four children entered into the house and assaulted the victim and forcefully committed raped upon her. As a result of that, she shouted for help and, hence, her father, who was working in nearby field came to rescue her along with other persons and caught hold of the respondent-accused there itself.

3.2 As there was bleeding from the private part of the victim, immediately she was taken to Khedbrahma Referal Hospital, where the Medical Officer (P.W.No.1, Arjunsinh Kalusinh Charan) examined her. After examination, he found that she requires further treatment and, hence, she was referred to Civil Hospital, Himmatnagar with a woman constable along with yadi, where P.W.No.6, Bhamini Babulal Pandit, Exh.40 examined her and, thereafter, the victim was admitted into the hospital as indoor patient till 19.12.2005.

3.3 The father of the victim immediately lodged the complaint with Khedbrahma Police Station, which came to be registered as Khedbrahma Police Station I-C.R.No.92/2005 for the offence under Section 376 etc. of the Indian Penal Code. Even prior to that, the father of the victim gave history before Dr.Charan (P.W.No.1) as well as Dr.Pandit (P.W.No.6), which came to be noted down by the doctor in case papers. Thereafter, Dr.Pandit treated her and took semen, blood etc. of the victim and sent the same to FSL.

3.4 Simultaneously, the accused was also examined by the doctor and semen of the respondent-accused has also been collected of the accused and sent to FSL. Not only that, clothes worn by the victim as well as accused at the time of incident were seized by preparing panchnama and sent to FSL with forwarding letter. On receiving the FSL report, same was kept with investigation file along with the medical certificate issued by the concerned doctor. Investigating Officer recorded the statements of various witnesses, prepared the panchnama of scene of offence and arrested the accused under the panchnama.

4. At the end of investigation, chargesheet came to be submitted before the Court of Learned J.M.F.C,

Khedbrahma. As the offence was exclusively triable by the Court of Sessions, same was committed to the Court of District & Sessions Court, Sabarkantha @ Himmatnagar, which came to be numbered as Sessions Case No.24/2006 and transferred into the Court of Learned Additional Sessions Judge, Fast Track Court No.2, Sabarkantha @ Himmatnagar, camp at Idar.

5. On production of the accused, the learned Additional Sessions Judge framed the charge against the appellant-accused, wherein he pleaded not guilty and claimed to be tried.

6. To prove the case against the appellant-accused, the prosecution examined as many as 8 witnesses. They are as under :-

(1) Dr.Arjunsinh Kalusinh Charan, Exh.8,
(2) Lebabhai Devjibhai Khant, Exh.19,
(3) Dr.Rajeshkumar Laxmishanar Purohit, Exh.23,
(4) Punaji Vajaji Khant, Exh.25,
(5) Bakabhai Bhikhabhai Khant, Exh.35,
(6) Dr.Bhimini Babulal Pandit, Exh.40,
(7) Hakubhai Badabhai (P.S.O.), Exh.42,
(8) Vimalkumar Rupnarayanbhai Bajpai (IO), Exh.45.

7. The prosecution also produced and relied on 21 documents viz., consent letter of the victim for physical check-up at Exh.9, police yadi for physical check-up of the victim at Exh.10, certificate issued by the C.H.C., Khedbrahma at

Exh.11, yadi for physical check-up of the accused at Exh.12, consent letter of the accused for physical check-up at Exh.13, certificate of the physical check-up of the accused at Exh.14, body position panchnama of the accused at Exh.22, refer chit of the victim at Exh.24, certificate issued by the Civil Hospital, Himmatnagar at Exh.25, slip at Exhs.27 to 31, scene of offence panchnama at Exh.32, slip at Exh.33, seizure of clothe panchnama of the victim at Eh.34, slip at Exh.36, panchnama at Exh.37, case papers of the victim at Exh.41, copy of station diary at Exh.43, complaint at Exh.46, note at Exh.47, analysis report at Exh.49 and closing purshis at Exh.50.

8. On submission of the closing purshis by the Learned A.P.P. and after recording the further statements of the accused under Section 313 of the Criminal Procedure Code, the Learned Additional Sessions Judge, Fast Track Court No.2, Sabarkantha @ Himmatnagar, camp at Idar convicted the appellant-accused for having committed offence punishable under Sections 376 & 323 of the Indian Penal Code and, therefore, he accordingly, passed the order of conviction and sentence as stated hereinabove.

9. Being aggrieved by the aforesaid Judgment and Order of conviction and sentence awarded by the trial

Court, the appellant-accused has preferred this appeal.

10. We have heard learned counsel, Mr.H. Ahmed for the appellant-accused and learned Additional Public Prosecutor, Mr. H.L. Jani for the State. We have been taken through the record and proceedings by the learned counsel for the respective parties.

11. It has been mainly argued by the learned counsel for the appellant-accused, Mr.H. Ahmed on the basis of copy of evidence lying with him along with the record and proceedings that the complainant, who is father of the victim is not the witness of incident. According to him, as per the complaint or evidence of the complainant, he reached the scene of offence later on.

11.1 It is also argued that at the time of alleged incident, even brother of the victim was also at home.

11.2 Other witnesses are the relatives of the complainant as well as victim and, therefore, their evidence may not be accepted as it is and it requires scrutiny.

11.3 It is argued that the appellant-accused is totally innocent and has been falsely involved into the crime in question by the father of the victim. Lastly, it is argued that even sentence is also on

higher side and only on that ground, the matter requires consideration. Mr.Ahmed has, therefore, urged that the present appeal deserves to be allowed and the judgment and order of conviction and sentence as pronounced by the learned trial Judge requires to be set aside.

12. Mr.H.L. Jani, learned Additional Public Prosecutor, who appears on behalf of the respondent-State has taken us through the reasoning of the learned Additional Sessions Judge.

12.1 He submitted that no interference is called for as the prosecution has established the case against the appellant-accused beyond doubt.

12.2 It is further submitted by Mr.Jani that looking to the seriousness of the offence, physical and mental condition of the victim, who was 12 years old at the time of incident and being mentally retarded girl and also deaf and dumb and who was forcefully raped by the appellant-accused aged about 26 years and well built having four children, he should not be acquitted.

12.3 Mr.Jani has also taken us through the evidence of P.W.No.6, Dr.Pandit along with the evidence of P.W.No.1, Dr.Arjunsinh Kalusinh Charan, who initially treated her and referred to Gynaecologist at Himmatnagar.

12.4 It is also submitted that looking to the facts and circumstances of the case and seriousness of the offence, sentenced awarded by the Court is just, proper and reasonable one and, therefore, the Court should not interfere with the same. It is submitted by the learned A.P.P. that there are sufficient evidence available on record to connect the appellant-accused with the crime in question.

12.5 Mr.Jani has, therefore, urged that the learned trial Judge was perfectly justified in coming to the conclusion that the appellant-accused has committed the crime. Raising the abovesaid contentions, Mr.Jani has urged that the present appeal deserves to be dismissed.

13. We have gone through the oral as well as documentary evidence and the reasoned judgment delivered by the Court below shown to us by the learned counsel for the respective parties. We have gone through the evidence of complainant – father of the victim, Lebabhai Devjibhai Khant (P.W.No.3, Exh.19), Dr.Arjunsinh Kalusinh Charan (P.W.No.1, Exh.8), who was discharging his duty as Medical Officer at Khedbrahma at the relevant time and who after examination issued injury certificate and referred the victim to Civil Hospital, Himmatnagar along with lady constable with Police yadi and who

also recorded the history of incident and noted down the same upon the case papers and Dr.Bhavini Babulal Pandit (P.W.No.6, Exh.40), who treated the victim till 19.12.2005 and through her the prosecution has proved the injury certificate. P.W.No.6, Dr.Bhavini Pandit has specifically deposed before the Court below that in view of her physical condition of the victim and by the grace of God, she could manage to survive. She also deposed that when she was brought to the hospital, she was semi-conscious, deaf and dumb, physically handicapped and mentally retarded 12 years girl. She has also deposed that on inquiry, she came to know that she was not even in a position to hear and speak and, therefore, by way of actions, she tried to make understand her the incident. As per her deposition, the history recorded by her on case papers has been provided to the father of the victim.

13.1 It is required to be noted that at the time of incident, the age of the victim was 12 years and she was a mentally retarded girl, even deaf and dumb and also physically handicapped. It is also required to be noted that the appellant-accused has been caught hold of on the spot and pair of chappal found at the scene of offence and clothes worn by

the victim as well as appellant-accused at the time of incident were seized under the panchnama after completing all formalities. FSL Report at Exh.49 combined with the forwarding letter, receipt, opinion of FSL and serological report totally support the say of the prosecution. The Muddamal article g3 was blood sample of appellant-accused of the blood group 'A' positive and the blood marks found upon all muddamal articles were group 'A' i.e. a1 to a4, d1, d2, e1, e3, f4, f5, f6, f7 and g7. It is required to be noted that the clothes worn by the appellant-accused seized from the place of offence also bear blood stain marks, which was of group 'A'. FSL report on the semen is also in favour of the prosecution along with other scientific evidence on record.

13.2 We have gone through the detailed evidence of Dr.Pandit, P.W.No.6, Exh.40. She has categorically deposed before the Court that the injuries received by the victim are very serious. There are no cross-examination by the learned counsel for the appellant-accused into the Court below as to the denial or any suggestion and evidence on record speaks volume against the appellant-accused.

13.3 Even his presence has been established from the above referred evidence and the evidence of

Dr.Rajeshkumar Laxmishankar Purohit, Exh.23, who examined the accused.

13.4 In short, the prosecution was able to prove the case against the appellant-accused beyond reasonable doubt by way of oral as well as documentary evidence.

13.5 It is required to be noted that on hearing the shout for help, when the complainant reached the scene of offence, he saw that the appellant-accused was found in active compromising position and he has been caught hold of there itself. Thereafter, the complainant immediately took the victim to Referal Hospital at the earliest opportunity and complaint to that effect has also been lodged. Moreover, medical evidence and scientific evidence are also in favour of the prosecution and question of enmity has not been established at all.

13.6 Over and above, it is required to be noted that the appellant-accused is a married physically well built man aged about 26 years, having four children just to satisfy his lust has committed rape upon the victim, who is aged 12 years at the time of incident and who is physical handicapped, mentally retarded and deaf and dumb.

13.7 In view of the above, we hold that the prosecution has proved the case against the appellant-accused

beyond reasonable doubt and, therefore, the sentenced awarded by the Court below looking to the seriousness of the offence is just, legal and proper.

14. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of **STATE OF KARNATAKA VS. HEMAREDDY** reported in **AIR 1981 SC 1417** which reads as under:-

> ".... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

15. In view of the above, since there is no substance in any of the arguments advance by the learned counsel for the appellant-accused, this appeal is required to be dismissed.

16. The appeal is dismissed. R & P are ordered to be sent back forthwith.

(R.P.DHOLAKIA, J.) (K.S.JHAVERI, J.)

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